

AEJ DC Meeting Statement 28 March 2018

1. SUMMARY

The DC met on 26 March 2018 to discuss whether a Failure to Pay Credit Event occurred with respect to Noble Group Limited (the **Reference Entity**) in relation to Updated 2003 Transactions and 2014 Transactions (together, **Relevant Transactions**) as a result of the failure by the Reference Entity to repay the outstanding principal amount of the 3.625% US Dollar fixed rate senior notes due 2018 issued by the Reference Entity (the **2018s**) on the maturity date thereof, being 20 March 2018.

The DC Resolved that:

- (a) a Failure to Pay Credit Event has occurred with respect to the Reference Entity;
- (b) the date of the Failure to Pay Credit Event that has occurred with respect to the Reference Entity is:
 - (i) in relation to Relevant Transactions with a Scheduled Termination Date occurring on 20 March 2018 (the **March 2018 Relevant Transactions**), 20 March 2018; and
 - (ii) in relation to Relevant Transactions with a Scheduled Termination Date occurring on or after 23 March 2018, 23 March 2018;
- (c) the Credit Event Resolution Request Date is:
 - (i) in relation to the March 2018 Relevant Transactions, 22 March 2018; and
 - (ii) in relation to Relevant Transactions with a Scheduled Termination Date occurring on or after 23 March 2018, 26 March 2018; and
- (d) an Auction will be held to settle the Relevant Transactions with respect to which a Credit Event Resolution has occurred.

Capitalised terms used but not defined in this Meeting Statement have the meanings given to them in the Credit Derivatives Determinations Committees Rules (January 20, 2016 version) (including in the 2014 Definitions and the Updated 2003 Definitions, each as defined therein, together the **Definitions**) (the **DC Rules**).

The DC did not formally consider Relevant Transactions with a Scheduled Termination Date occurring on 21 March 2018 or 22 March 2018 but any such Relevant Transaction would in any case be subject to a Failure to Pay Credit Event occurring on its Scheduled Termination Date (and, in respect of which, the Credit Event Resolution Request Date would be 22 March 2018 or 23 March 2018, respectively).

2. FAILURE TO PAY

Section 4.5 of both sets of Definitions provides that a "Failure to Pay" Credit Event means "*after the expiration of any applicable Grace Period (after the satisfaction of any conditions precedent to the commencement of such Grace Period), the failure by [the] Reference Entity to make, when and where due, any payments in an aggregate amount of not less than the Payment Requirement under one or more Obligations, in accordance with the terms of such Obligations at the time of such failure.*"

Taking the elements of this definition in turn:

- (a) "*after the expiration of any applicable Grace Period*"

The relevant payment failure relates to the repayment of the outstanding principal amount of the 2018s on their stated maturity of 20 March 2018. The terms and conditions of the 2018s as set out in the Offering Circular dated 20 November 2012 (the **2018s OC**) do not specify a grace period for the non-payment of principal. Accordingly, the DC determined that a Grace Period of three Grace Period Business Days is deemed to apply *provided that* such deemed Grace Period cannot expire any later than the Scheduled Termination Date in respect of any Relevant Transaction.¹

Accordingly, the DC determined that the Grace Period expired on, and the relevant payment failure for purposes of Section 4.5 of the 2014 Definitions occurred, prior to midnight (Greenwich Mean time)² on 23 March 2018,³ except in relation to the March 2018 Relevant Transactions for which no deemed Grace Period applied on account of the proviso noted above and so the relevant payment failure in respect of the March 2018 Relevant Transactions occurred prior to midnight (Greenwich Mean time) on 20 March 2018.⁴

(b) *"failure by a Reference Entity to make, when and where due, any payments"*

The Reference Entity's press releases dated 22 March 2018 (the **22/3 Press Releases**)⁵ confirmed that the Reference Entity did not pay the outstanding principal amount of the 2018s on or prior to 20 March 2018 and that the Reference Entity had received a letter dated 21 March 2018 from the trustee under the 2018s giving notice to the Reference Entity that an "Event of Default" had occurred under the 2018s due to the failure by the Reference Entity to pay the principal amount due and payable thereunder on 20 March 2018. In light of the terms of the Restructuring Support Agreement referred to in the 22/3 Press Releases, it is the DC's understanding that this payment failure had not been remedied on or prior to 23 March 2018.

(c) *"in an aggregate amount of not less than the Payment Requirement"*

The Payment Requirement is USD 1 million.⁶ The failure to pay was in respect of the outstanding principal amount of the 2018s, which according to the 21/3 Article (as defined below) and the Reference Entity's press release dated 28 January 2016⁷ stands at US\$379 million. The DC therefore determined that the failure to pay was in excess of the Payment Requirement.

(d) *"under one or more Obligations, in accordance with the terms of such Obligations at the time of such failure"*

To constitute an Obligation for the purposes of the Standard Asia Corporate/Asia Corporate Transaction Type, the 2018s must be borrowed money obligations of the Reference Entity that satisfy the Not Subordinated, Not Sovereign Lender, Not Domestic Currency, Not Domestic Issuance and Not Domestic Law Obligation Characteristics.

The DC determined that the 2018s constituted borrowed money obligations of the Reference Entity. The DC further determined that the 2018s satisfied each of the applicable Obligation Characteristics:

¹ Section 1.46(c) of the 2014 Definitions and Section 1.12(a)(iii) of the Updated 2003 Definitions.

² See Section 1.50 of the 2014 Definitions.

³ The DC notes that the corresponding analysis under the Updated 2003 Definitions is slightly different but ultimately gets to the same conclusion given that the payment under the 2018s was to be made in U.S. Dollars and, practically speaking, payment thereof could not have been made later than close of business in the New York market on 23 March 2018. Even if this were to mean 6p.m. New York time, that would have been 10p.m. GMT and so the DC determined that the payment failure for the purposes of Section 4.4 of the Updated 2003 Definitions occurred on 23 March 2018.

⁴ See previous footnote which equally applies in relation to the corresponding analysis under the Updated 2003 Definitions.

⁵ http://infopub.sgx.com/FileOpen/Noble%20-%20Announcement%20Regarding%202018%20Notes%20_22%20March%202018.ashx?App=Announcement&FileID=493726 and

http://infopub.sgx.com/FileOpen/Noble%20-%20Clarification%20Announcement%20_22%20March%202018vF.ashx?App=Announcement&FileID=493738

⁶ Section 4.9(d) of the 2014 Definitions and Section 4.8(d) of the Updated 2003 Definitions.

⁷ <http://www.thisisnoble.com/images/documents/announcements/bondrepurchases28Jan2016.pdf>

- (i) *Not Subordinated*: the Pricing Supplement dated 13 March 2013 (the **PS**) specifies that the 2018s are "Senior" notes and Condition 3 of the 2018s as set out in the 2018s OC states that the 2018s constitute unsecured and unsubordinated obligations of the Reference Entity which shall, save for exceptions as may be provided by applicable legislation,⁸ rank at least equally with all other present and future unsecured and unsubordinated indebtedness of the Reference Entity;
- (ii) *Not Sovereign Lender*: this is ultimately a question of fact but there is no indication in the PS or the 2018s OC that the 2018s are primarily owed to a Sovereign or any entity or organisation established by treaty or other arrangement between two or more Sovereigns;
- (iii) *Not Domestic Currency*: the 2018s are denominated in U.S. Dollars which does not constitute a Domestic Currency;
- (iv) *Not Domestic Issuance*: again this is ultimately a question of fact but there is no indication in the PS or 2018s OC that the offering of the 2018s was anything other than an international offering; and
- (v) *Not Domestic Law*: the 2018s are governed by English law which does not constitute a Domestic Law.

Accordingly, the DC determined that the 2018s constitute "Obligations" under the Definitions.

3. PUBLICLY AVAILABLE INFORMATION

One of the other issues considered by the DC was whether the supporting information that accompanied the request to the DC Secretary on 22 March 2018 to convene the DC, namely a press release issued by the Reference Entity dated 16 March 2018 (the **16/3 Press Release**)⁹ and a Bloomberg article dated 21 March 2018 (the **21/3 Article**)¹⁰, constituted good Publicly Available Information.

Section 2.1(b) of the DC Rules states that the DC may not deliberate a Potential DC Issue relating to whether a Credit Event has occurred until the DC determines that Publicly Available Information¹¹ has been provided to the DC Secretary.

The DC agreed that as the 16/3 Press Release had been published by the Reference Entity itself, it was capable of constituting Publicly Available Information and, if so, it would not be necessary for the DC to be in possession of information from a second public source.¹²

The 16/3 Press Release, *inter alia*, (i) confirmed that certain sums in respect of outstanding principal amounts and accrued interest would become due and payable on 20 March 2018 in respect of the 2018s; and (ii) announced that the board of directors of the Reference Entity had decided that the Reference Entity will not make payment of such amounts due and payable on 20 March 2018 in respect of the 2018s.

The issue the DC considered in further detail was whether it could rely on information published on 16 March 2018 to commence its deliberations on the Failure to Pay Credit Event question even though the non-payment by the Reference Entity that would be capable of triggering that Credit Event would only occur after the publication of such information (i.e. on 20 March 2018 and 23 March 2018, respectively). The DC determined that the 16/3 Press Release contemplating, and therefore published prior to the occurrence of, a

⁸ Note that priorities arising by operation of law are ignored for the purposes of testing the Not Subordinated Obligation Characteristic.

⁹ <https://dc.isda.org/documents/2018/03/noble-group-announcement-of-restructuring.pdf>

¹⁰ See article copied to the DC website: <https://dc.isda.org/cds/noble-group-limited-4/>

¹¹ As defined in Section 1.35(a) of the 2014 Definitions/Section 3.5(a) of the Updated 2003 Definitions.

¹² Section 1.35(a)(ii) of the 2014 Definitions/Section 3.5(a)(ii) of the Updated 2003 Definitions

Failure to Pay Credit Event would constitute good Publicly Available Information and could therefore be used by the DC to commence its deliberations on the Credit Event question itself.

In support of this conclusion, the DC noted the approach taken by the EMEA DC in relation to a similarly anticipatory press release in respect of the Failure to Pay Credit Event in relation to Norske Skogindustrier ASA¹³. For similar reasons to the EMEA DC, the DC was of the view that the 16/3 Press Release could nevertheless constitute good Publicly Available Information. Furthermore, the DC noted that the definition of Publicly Available Information in each set of Definitions provides that Publicly Available Information "need not state...that [the relevant] occurrence...*is the result of exceeding any applicable Grace Period*"¹⁴ (emphasis added).

4. CREDIT EVENT RESOLUTION REQUEST DATE

The term "Credit Event Resolution Request Date" under each set of Definitions is, broadly speaking, defined to mean "*the date as publicly announced by the DC Secretary that the relevant DC Resolves to be the date on which the notice to the DC Secretary requesting that a DC be convened to Resolve whether a Credit Event **has occurred** was **effective** and on which the relevant DC was in possession of Publicly Available Information with respect to such Credit Event question*".¹⁵

The DC was of the view that a notice to the DC Secretary must relate to an event that "has occurred" in order for such notice to be "effective" for purposes of the "Credit Event Resolution Request Date" definition. For information, this interpretation is consistent with that taken by the EMEA DC in the decision on whether a Failure to Pay Credit Event had occurred with respect to Norske Skogindustrier ASA¹⁶.

The DC further determined, as noted above, that the earliest date on which the Failure to Pay could have occurred was (i) with respect to March 2018 Relevant Transactions, 20 March 2018, and (ii) in relation to Relevant Transactions with a Scheduled Termination Date occurring on or after 23 March 2018, 23 March 2018. In relation to the latter category of Relevant Transactions, given that the payment failure for purposes of the Failure to Pay Credit Event Definition occurred on 23 March 2018, the earliest time that a notice to ISDA to convene the DC to determine whether a Failure to Pay Credit Event in respect of these Relevant Transactions could have been effective was 26 March 2018 (taking into account the effectiveness of notices provision at Section 3.1(a) of the DC Rules, which in this case is by reference to Singapore and Hong Kong time).

5. AUCTION

The DC Resolved to hold an Auction in respect of all Relevant Transactions with respect to which a Credit Event Resolution has occurred. Further details on the terms and date of such Auction will be published in due course.

¹³ [See EMEA DC Statement of 2 August 2017.](#)

¹⁴ See Section 1.35(c)(ii)(B) of the 2014 Definitions and Section 3.5(d)(ii)(B) of the Updated 2003 Definitions.

¹⁵ See Section 1.30 of the 2014 Definitions and Section 1.24 of the Updated 2003 Definitions for the full definitions of such terms.

¹⁶ [See EMEA DC Statement of 16 August 2017.](#)